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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/610,229	07/05/2000	Roy Malcolm Moody	37261.p058	4990

7590 07/18/2002

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EXAMINER

STODOLA, DANIEL P

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 07/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**Application No.  
**09/610,229**Applicant(s)  
**Moody et al**Examiner  
**Daniel P. Stodola**Art Unit  
**3634**

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED Jul 9, 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on Jul 9, 2002. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see NOTE below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_

4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 10-17

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 1-8

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_

10. ☒ Other: See attached sheets.

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With respect to applicants' changes to claim 3, it should be noted that "a window sash", line 3, should be changed back to --the window sash-- so that the claim recitation clearly refers to the previously recited window sash and is not implying the presence of another, second, window sash (i.e., avoid the double inclusion of a "window sash"). Further, it appears that the phrase "in use", line 3, should be set apart from the rest of the phrasing of lines 2-3 by commas for proper grammatical construction.

With respect to applicants' claim 1 previously submitted in the amendment filed January 16, 2002 (Certificate of Mailing for November 21, 2001), it is pointed out that line 4 does not make sense as presented. It appears that ", said hinge being mountable to a window frame by the mounting," should be located after "mounted", line 5. Further, a comma should be inserted between "member" and "a", line 6.

Applicants' attention is also directed to the improper inclusion of legal phraseology, e.g., "means", in the abstract. See line 9 of the abstract. Appropriate correction is required.

Applicant's arguments filed July 9, 2002 have been fully considered but they are not persuasive.

Applicants' position is that the hinge of Vetter is not part of the window operator as is being claimed. In this regard, it should be noted that it is the language of the claims which determines the scope of the claims for patentability determination purposes. Claim 1 sets forth a conglomeration of elements that, together, define a "window operator". Further, it is noted that claim 1 sets forth rather broadly the presence of a hinge "with which a window sash...can be

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mounted”, the hinge being “mountable to a window frame by the mounting” and that “a part of the hinge” is “connected to the coupling such that movement of the coupling results in movement of the hinge”.

The examiner indicated that “35” of Vetter constituted the “hinge” while applicants assert that the “hinge” is “30”, “31”, and “32”. In this regard, it is noted that claim 1 does not structurally define what elements constitute the recited “hinge”. As such, there is nothing in the claim limiting the number of elements constituting the “hinge”. Nevertheless, turning to applicants’ interpretation of the elements said to constitute the “hinge”, it should be noted that these elements mount the sash 11 to a “mounting” constituted by sill 15 of Vetter. Further, the elongated threaded member 49 of Vetter is also mounted to the mounting 15 via brackets 50,51. Finally, movement of the coupling of Vetter (e.g., 35, 36, 37, 38, 40) results in movement of the hinge since for the window to open, there must be movement of the hinge part directly connected to the window sash. This movement of the hinge can be seen by a comparison of Figs. 2 and 3. There is nothing in the language of the claims that precludes this interpretation. Thus, Vetter “reads on” applicants’ window operator as defined by the language of the claims.

In view of the above, it would appear that the claims need to be much more precise in defining the elements of the claims and their structural relationships.

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Any inquiry concerning this communication should be directed to Daniel P. Stodola at telephone number (703) 308-2686.

A handwritten signature in black ink that reads "Daniel P. Stodola". The signature is written in a cursive style with a large, looped initial 'D'.

Stodola  
July 17, 2002

DANIEL P. STODOLA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600